



In the Matter of

ALLEN L. MOSBAUGH,

ARB CASE NO. 96-067

COMPLAINANT,

**ALJ CASE NOS. 91-ERA-1;
91-ERA-11**

v.

DATE: August 23, 1996

GEORGIA POWER COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

These cases arise under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992)^{2/}. The parties submitted a Confidential Settlement Agreement and Appendix General Release Under Section 210, seeking approval of the settlement and dismissal of the complaints in the consolidated cases. The Secretary issued a Decision and Remand Order on November 20, 1995, to the presiding Administrative Law Judge (ALJ) for any necessary supplemental proceedings consistent with that decision to determine the amount of back pay, benefits, compensatory damages and attorney's fees to which the

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996)(copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

^{2/} Section 2902 of the Comprehensive National Energy Policy Act of 1992, Pub. L. No. 102-86, 106 Stat. 2776, amended the ERA for claims filed on or after the date of enactment, October 24, 1992. See Section 2092(I) of Pub. L. 102-486. These complaints were filed in 1990 and therefore the 1992 amendments do not apply.

Complainant was entitled. The parties settled the case and submitted the documents to the Board while the matter was pending before the ALJ on remand.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaints. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising solely under 42 U.S.C. § 5851, styled as "Section 210", in the settlement agreement and release. See Settlement ¶¶ 1.1, 1.3, 1.5, 8.1 and Appendix General Release Under Section 210. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations that Respondent violated the ERA.

Settlement section III pertains to the confidentiality provisions of the agreement, and does not restrict any disclosure by Complainant where required by law. Settlement section IV does not prohibit Complainant from reporting any suspected nuclear safety concern to the proper governmental authority, or from participating in any proceeding or investigation pertaining thereto. See 4.1. We do not find this restriction of information violative of public policy, since it does not restrict or impinge upon the parties from such disclosure after appropriate legal process. *McGlynn v. Pulsair Inc.*, Case No. 93-CAA-2, Sec. Final Order Approving Settlement, June 28, 1993, slip op. at 3.

The parties' submissions including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.^{3/} See *Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

Section V provides that the agreement will be governed by the laws of Georgia. We construe this to mean that the authority of the Board and any Federal court, shall in all respects be governed by the laws and regulations of the United States. See *Carter v. Electrical Dist. No. 2 of Pinal County*, 92-TSC-11, ARB Order (May 30, 1996).

^{3/} Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaints. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINTS before the Board WITH PREJUDICE. *See* ¶ 1.1.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member